IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.01.2017

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.1762 of 2006
M.P.No.1 of 2006

1.Chinna Kannu @ Ranganayaki
2.Hemalatha .. Petitioners

vs.

1.A.Mani
2.D.Kumar
3.Jegadeesan
4.Devadass
5.Subramania Asari
6.Kavitha
7.Sivakumar
8.Gunasekharan
9.Amudha
.. Respondents

K.Karunakaran (died)

(The 4th respondent in the above Civil Revision Petition is given up)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 26.09.2006 made in I.A.No.555 of 2005 in I.A.No.704 of 2004 in O.S.No.389 of 1991 on the file of I Additional Subordinate Judge, Coimbatore and prayed to set aside the same.

For Petitioners : Mr.P.Saravana Sowmiyan

For Respondents : M/s.P.T.Seshadri for R2
(No appearance)
R1-died

O R D E R

The Plaintiffs / Civil Revision Petitioners are before this Court, challenging the order in I.A.No.555 of 2005 in I.A.No.704 of 2004 in O.S.No.389 of 1991, dated 26.09.2006 on the file of I Additional Subordinate Judge, Coimbatore for impleading themselves as the parties/defendants in the said suit.

2. The petitioners herein / plaintiffs in the suit have filed the suit for maintenance and for partition of the suit properties. The defendants 2 to 8 have filed their written statement. While pendency of the above suit, the respondents 1 and 2 herein/ 3rd parties have filed the above application in I.A.No.555 of 2005 in I.A.No.704 of 2004 for impleading them as parties/defendants in the suit, by stating that they have purchased the suit property from the third respondent. The proposed parties also stated that at the time of selling the property, the third defendant has not disclosed about the pendency of

the suit and suppressing the said fact, he sold the suit property to them. Moreover, the petitioners are bonafide purchasers and without the knowledge of encumbrance and Court proceedings as aforesaid they have been purchased and they are in possession and enjoyment of the property, ever since the date of purchase and they had also let out the property to tenants from whom, they had been collecting rent for more than 5 to 6 years. Therefore, they are the necessary parties in the proceedings. A counter affidavit has been filed by the plaintiffs/ revision petitioners herein stating that the proposed parties are having knowledge about the pendency of the suit and they are not the bonafide purchasers and therefore, they are not necessary in the suit proceedings and prayed for dismissal of I.A.No.555 of 2005 in I.A.No.704 of 2004 in O.S.No.389 of 1991.

3. Considering both sides arguments, the learned Subordinate Judge, Coimbatore, was pleased to allowed the said application to implead the third parties as defendants in the suit on 26.09.2006. Challenging the said order, the plaintiffs have filed the Civil Revision Petition before this Court.

4. Heard Mr.P.Saravana Sowmiyan, learned counsel appearing

for the petitioners and M/s.B.T.Seshadri, learned counsel appearing for the second respondent and perused the materials available on record.

5. Admittedly, the suit was filed for partition and while pendency of the suit, the third defendant sold the property to third parties by suppressing the pendency of the suit.

6. Time and again, this Court and Hon'ble Apex Court have held that the third parties are not necessary in the partition suit and they cannot be impleaded as parties in the suit proceedings. But in the case on hand, the proposed parties are the bonafide purchasers and they are in possession and enjoyment of the suit schedule property. Hence, they are necessary parties in this proceedings.

7. Considering the facts and circumstances of the case, the learned Judge has allowed the said I.A.No.555 of 2005 in I.A.No.704 of 2004 to implead the proposed parties/defendants in the suit.

8. The order of the learned Judge is a well considered order and the same does not warrant any interference by this Court. Hence, the Civil Revision Petition is liable to be dismissed and accordingly, the

same is dismissed.

9. In the result:

(a) The Civil Revision Petition is dismissed;

(b) The trial Court is directed to give opportunity to both the parties and take up the suit in O.S.No.389 of 1991, on day today basis, without giving any adjournment to either parties, and dispose of the same within a period of two months from the date of receipt of a copy of this order, since the suit is of the year 1991 and pending for more than 26 years; and

(c) Both the parties are hereby directed to co-operate for early disposal of the suit.

(d) Connected miscellaneous petition is closed. No costs.

27.01.2017

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Note:Issue order copy on 31.01.2017
Index:Yes/No
Internet:Yes/No
To
The I Additional Subordinate Judge,
Coimbatore.

M.V.MURALIDARAN,J.

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